



FOR IMMEDIATE RELEASE

**GOVERNMENT HAS NOT REMOVED OR RESTRICTED
PROSECUTORIAL DISCRETION FOR SECTION 377A,
PUBLIC PROSECUTOR RETAINS
FULL PROSECUTORIAL DISCRETION**

Former Attorneys-General, Professor Walter Woon and Mr V K Rajah, have recently suggested that it is not desirable for the Government and Parliament to direct the Public Prosecutor (PP) not to prosecute offences under section 377A of the Penal Code, or to create the perception that they are doing so. Such comments may give rise to the inaccurate impression that the exercise of the PP's discretion has been removed or restricted in respect of section 377A.

2 Under Article 35(8) of the Constitution, the discretion to institute, conduct or discontinue any proceedings for any offence is vested in the Attorney-General as the PP. In exercising this discretion, the PP seeks only to advance the public interest, taking into account all the facts and circumstances of the case, and other matters such as the recommendations of the investigating agencies and the expressed intention of Parliament.

3 The Government's position on section 377A is that the Police will not proactively enforce this provision, for instance by conducting enforcement raids. However, if there are reports lodged by persons of offences under section 377A, for example, where minors are exploited and abused, the Police will investigate.

4 Where the Police conducts investigations into an offence under section 377A, the Police will decide whether or not there is sufficient basis to refer the case to the PP. It will then be for the PP to determine whether to prosecute. In doing so, the PP exercises his independent discretion on whether to charge the offender, solely on the basis of his assessment of the facts, the law, and the public interest. While the PP is entitled to consider public policies in exercising his discretion, these do not fetter the exercise of prosecutorial discretion.

5 These fundamental principles have been repeatedly affirmed by past and present Attorneys-General and have also been recognised and respected by the

Government and Parliament. As an illustration, in 2008, the (then) Deputy Prime Minister and Minister for Home Affairs, Mr Wong Kan Seng, explained that in the case of an offender who had been charged under section 377A of the Penal Code, a police report was lodged by a 16-year old male who had oral sex with the suspect. The Police referred the case to the PP after completing investigations, and “[t]he Public Prosecutor decided to charge the accused under section 377A after taking into account all the facts and circumstances of the case, including the complainant’s age and the fact that the offence had taken place in a public toilet”. The Minister also made clear that: “... for any report disclosing an offence, Police will place the evidence before the Public Prosecutor for a decision as to whether or not to proceed with prosecution.”

6 The Police’s exercise of its enforcement or investigative powers should therefore not be conflated or confused with the PP’s exercise of discretion to commence prosecution. The PP’s exercise of prosecutorial discretion has always been, and remains, unfettered. In the case of section 377A, where the conduct in question was between two consenting adults in a private place, the PP had, absent other factors, taken the position that prosecution would not be in the public interest. This remains the position today.

AG Lucien Wong
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